

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA

14-CR-414 (BMC)

-against-

RASHAWN JERMAINE SMALLS.
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AFFIRMATION

DEBORAH COLSON, ESQ., hereby affirms as follows:

1. I am an attorney licensed to practice in the State of New York, and I have been appointed under the Criminal Justice Act to represent Rashawn Jermaine Smalls, the defendant in this matter.
2. I make this affirmation based on my review of the Complaint, the Indictment, discovery, communications with the prosecutor assigned to the case, and upon information and belief.
3. Mr. Smalls was arrested on July 7, 2014, on a criminal complaint charging him with being a felon in possession of a weapon in violation of 18 U.S.C. § 924(g). The Complaint is attached as Exhibit A.
4. Mr. Smalls was indicted on July 24, 2014. The Indictment is attached as Exhibit B.
5. On discovery, the government provided a security camera video taken on the night of the incident. The video is taken from a distance, with scaffolding obscuring the picture. It is dark. There is no audio. And it is difficult to tell what is transpiring.
6. The government also provided a phone call between Mr. Smalls and a witness named Megan Woods. The call was recorded on June 26, 2014, while Mr. Smalls was detained on Riker's Island. It is also of limited value. The conversation is largely one-sided. Ms. Woods mentions the gun several times, but Mr. Smalls does not admit possession. He simply responds

with one-word answers and asks questions about what evidence the police purportedly have against him.

7. Attached as Exhibit C are excerpts from the Office of the Chief Medical Examiner of the City of the New York (“OCME”) case file number FBI3-05292. This file contains documents and test results related to the evidence collected in Mr. Smalls’ case. The full case file was turned over on discovery, and we will provide it should the Court wish to see it.

8. Attached as Exhibit D are excerpts from OCME case file FBS14-00107. This file contains documents and test results related to witness Megan Woods. The full case file was turned over on discovery, and we will provide it should the Court wish to see it.

9. Attached as Exhibit E is OCME case file FBS14-00190. This file contains documents and test results related to Mr. Smalls. The full case file is attached.

10. Attached as Exhibit F are the November 7, 2014, and January 5, 2015, oral decisions of the Honorable Mark Dwyer in *People v. Peaks & Collins*, Ind. Nos. 7589/2010 & 8077/2010, Supreme Court of New York, Kings County.

11. Attached as Exhibit G is the testimony of Dr. Ranajit Chakraborty in *People v. Peaks & Collins*. Dr. Chakraborty is a professor in the Department of Molecular and Medical Genetics and the Director of the Center for Computational Genomics at the Institute of Applied Genetics at the University of North Texas Health Science in Fort Worth, Texas. Dr. Chakraborty is a preeminent population geneticist, and he has submitted a declaration in support of this motion.

12. Attached as Exhibit H is the testimony of Dr. Eli Shapiro in *People v. Peaks & Collins*. Dr. Shapiro is a former assistant director at the Department of Forensic Biology Division at the OCME. He was the director of training there for roughly 10 years and leader of the Mitochondrial Team. He is a graduate of Columbia and Yale Universities.

13. Attached as Exhibit I is the testimony of Dr. Bruce Budowle in *People v. Peaks & Collins*. Dr. Budowle is a former senior scientist and lab head with the FBI, where his career spanned more than 25 years. His work was critical to developing the Combined Offender DNA Index System (CODIS).

14. Attached as Exhibit J are OCME's Forensic Biology Protocols for Forensic STR Analysis. These protocols are also available at <http://www.nyc.gov/html/ocme/downloads/pdf/Fbio/Protocols%20for%20Forensic%20STR%20Analysis.pdf>.

15. Attached as Exhibit K is Adele A. Mitchell, *et al.*, *Validation of a DNA mixture statistics tool incorporating allelic drop-out and drop-in*, Forensic Sci. Int'l: Genetics 6, 749-61 (2012).

16. Attached as Exhibit L is Jahelda Perez, *et al.*, *Estimating the number of contributors to two-, three-, and four-person mixtures containing DNA in high template and low template amounts*, Croat. Med. J. 52, 314-26 (2011).

17. Attached as Exhibit M are two excerpts from the testimony of Dr. Adele Mitchell in *People v. Peaks & Collins*. Dr. Mitchell was one of the lead developers of the FST.

18. Attached as Exhibit N is an excerpt from the testimony of Dr. Theresa Caragine in *People v. Peaks & Collins*. Dr. Caragine was another lead developer of the FST.

19. Attached as Exhibit O is an excerpt of statements made by Mimi Mairs to the Court in *People v. Peaks & Collins*. Ms. Mairs is the Special Counsel to the Forensic Biology Department at OCME.

20. Attached as Exhibit P is Hinda Haned, *et al.*, *Exploratory data analysis for the interpretation of low template DNA mixtures*, Forensic Sci. Int'l: Genetics 6, 767-74 (2012).

21. Attached as Exhibit Q is Christopher D. Steele and David J. Balding, *Statistical Evaluation of Forensic DNA Profile Evidence*, Annu. Rev. Stat. Appl. 2014, 1:361-84.
22. Attached as Exhibit R is Hinda Haned, *et al.*, *Complex DNA mixture analysis in a forensic context: Evaluating the probative value using a likelihood ratio model*, Forensic Sci. Int'l: Genetics 16, 17-25 (2015).
23. Attached as Exhibit S is David J. Balding and John Buckelton, *Interpreting low template DNA profiles*, Forensic Sci. Int'l: Genetics 4, 1-10 (2009).
24. Attached as Exhibit T is Peter Gill and Hinda Haned, *A new methodological framework to interpret complex DNA profiles using likelihood ratios*, Forensic Sci. Int'l: Genetics 7, 251-263 (2012).
25. Attached as Exhibit U is A Morin, *et al.*, *Shining Light into Black Boxes*, Science 336, 159-60 (April 2012).

Dated: January 22, 2015

/s/

Deborah Colson